Conf
Pam
#851

# MESSAGE

OF

# THE GOVERNOR OF VIRGINIA,

TO THE

# GENERAL ASSEMBLY.

---

RICHMOND:
JAMES E. GOODE, SENATE PRINTER.
1864.

Digitized by the Internet Archive
in 2010 with funding from
Duke University Libraries

http://www.archive.org/details/messageofgoverno02virg

Rm
F 251
Sp Col

# MESSAGE.

EXECUTIVE DEPARTMENT,
RICHMOND, VA., Dec. 7, 1864.

*Gentlemen of the Senate*
*and House of Delegates:*

I am gratified that you have again met in general assembly, to take into consideration the condition of our afflicted commonwealth. At the period of your last adjournment, our enemy was engaged in vast preparations for the capture and occupation of this proud city. Having completed his preparations, by the organization of one of the most formidable armies ever assembled on this continent, he, about the 1st of May last, commenced his march. He relied with confidence upon his vast numbers and thorough equipment, for an early consummation of his long deferred hopes. Led by the greatest of his captains, flushed with numerous successes, it was entirely natural that he should fearlessly look to the future, while we should contemplate it with uneasiness and apprehension. He had, however, scarcely crossed the Rapidan, before our noble army, led by that great and good man, General R. E. Lee, breaking up their camp, dashed upon his haughty columns, and after one of the bloodiest and best contested battles of the war, taught the enemy to respect the army he had affected to despise, and to know that his march to Richmond would be attended with difficulties and dangers he had not anticipated. I shall not undertake to detail the series of bloody battles which were fought on the road to Richmond, nor tell how the enemy, although continually strengthened by heavy reinforcements, was compelled to leave the city to his right, until finally he crossed the James, and undertook, by a *coup de main*, to carry the city of Petersburg; nor how, after nearly a seven months' campaign, of unexampled slaughter of his men, he still finds himself with hope deferred, and but little prospect of realizing expectations so confidently entertained for the last three years. Suffice it to say, that

you, gentlemen, are here in safety—here in calm deliberation—here to digest those measures which are still required by the dangers we have yet to meet.

It is right, however, that I should warn you that the enemy is diligently engaged in strengthening his army, and in recovering from the exhaustion caused by his repeated defeats. It is difficult really to comprehend our foe. The right of self-government was established by the blood of our revolutionary fathers; was proclaimed in the declaration of independence, and is engrafted in the constitution of all the states; and yet the United States, with reckless extravagance in men and money, unparalleled in the world's history, is denying this right, and seeking to overthrow and subjugate the people who proclaim it, and who only ask to be let alone—who, for simply asserting and maintaining this principle, are pursued with a venom, malignity and hate unknown in civilized war.

With everything dear to man at stake, I cannot suppose that there will be any hesitation on your part to embody the whole resources of the state, in men and means, in order to enable us successfully to avert the awful doom our enemy has in store for us.

One of your first duties, gentlemen, will be to take into consideration the measures to bring into the field all able-bodied men who are not *necessary* to the state government. It is utterly impossible for me to understand the logic which exempts state officers who are not necessary for the state government; and yet it is the fact that the judges are undertaking to turn loose from the grasp of military authority men without any duty to perform, upon the ground that they are officers provided by the constitution and the laws. There are some forty or fifty counties of Virginia within the enemy's lines, most of them under a regular government of the enemy. The state officers therein have been, where loyal of course, expelled from office, and are refugees. Most of them have acquired new homes, and formed new social and business relations, and may not return to their counties until this war shall terminate. Many will never return even with peace, and it may be a question, if they should do so, whether they would have a right to resume their offices. Under the laws and the constitution, the counties will average about sixty officers, furnishing within the enemy's lines a number equal to about two thousand, constituting a force sufficient, it may be, to turn the tide of a great battle. Yet, according to the de-

cisions of some of the judges, these officers would be exempt from military duty, although without civil duties to perform, and with a great probability that they will have none during the continuance of the war.

The court of appeals, in the case of Burroughs vs. Peyton, &c., has well said that "the obligation of the citizen to render military service is a paramount, social and political duty. It is a matter in which the whole body politic is interested. 'The citizens have a right collectively and individually to the service of each other to avert any danger which may be menaced. The manner in which the service is to be apportioned among them, is a matter for legislation.' The government, as the agent and trustee of the people, is charged with the whole military strength of the nation, in order that it may be employed so as to insure the safety of all. The power which it has to enforce the performance of the obligation to render military service, is given that it may be used, not abdicated. No right has been conferred on the government to divest itself, by contract or otherwise, of the power of employing, whenever and as the exigencies of the country may demand, the whole military strength that has been placed at his disposal. As the nature and extent of those exigencies cannot be foreseen, and it is impossible to to say in advance that the services of every citizen capable of bearing arms may not become indispensable for the defence of the country, the government has no right to enter into any contract precluding it from requiring those services, if they should be needed. If there be such right, the spectacle might be presented of a nation subjugated and destroyed at a time when it had within its limits citizens amply sufficient to defend it successfully against all the assaults of its enemies, but whose services could not be commanded because, forsooth, the government had contracted with them that they should not be required to serve in the army." Again: "The power of coercing the citizen to render military service for such time and under such circumstances as the government may think fit, is a transcendant power; but so far from being inconsistent with liberty, is essential to its preservation. A nation cannot foresee the extent of the dangers to which it may be exposed. It must therefore grant to its government a power equal to every possible emergency; and this can only be done by giving to it the control of its whole military strength. The danger that the power may be abused cannot render it proper to withhold it, for it is necessary to the national life."

It would seem to me that the doctrine of these extracts covers the

whole question; but should there be a doubt remaining, the following extract from the same able opinion, repeating a well established rule of law, must dispel it: "The well established rule of construction is that all grants of privileges and exemptions from general burdens are to be construed liberally in favor of the public, and strictly as against the grantee. Whatever is not plainly expressed and unequivocally granted, is taken to be withheld." Taken in this view, how can there be a question? The officers referred to are local officers; their duties are local; they forfeit their offices if they leave their counties. The justices of the peace are compelled to reside in the districts from which they are elected; and yet these officers are refugees—that is, resident out of their counties. In undertaking to protect them against the forfeiture provided by law, the courts have to assume that they are excused from the residence required, in consequence of the compulsion of the enemy. Is not this inference judicial legislation? At any rate, no act of assembly authorizes such an inference; and is it to be supposed that the law would not have provided for such a case had the legislature deemed it proper to do so? At least, can it be said that there is no doubt upon the subject; and if a doubt, that it should not, in the language of an extract already quoted, "be construed liberally in favor of the public?" How can the state be injured by the view for which I contend? How it may be prejudiced by the converse of the proposition, all can see.

But to exempt this large class of officers, or any portion of them, when they have no service to perform, is, it seems to me, plainly unconstitutional. The fourth article of the bill of right reads as follows:

That no man or set of men are entitled to exclusive or separate emoluments or *privileges* from the community but in consideration of public services." Will not these officers, without civil duties to perform, enjoy personal "*privileges?*" Surely it may legitimately be argued, that so far from being exempted, they are under a special obligation, in addition to the general one attaching to every citizen, to fight for the recovery of their counties. They have been ousted of their offices, have consequently suffiered a personal injury, and will realize a special advantage in the recovery of the counties from which they have been expelled. I know it is contended that these officers are entitled to exemption under the decision of the court in the case from which I have so freely quoted, and the following extract is relied upon in support of the position:

"It is absurd to suppose that the government of the Confederate States can rightfully destroy the government of the states which created it; and all the powers conferred on it must be understood to have been given with the limitation that in executing them, nothing shall be done to interfere with the independent exercise of its sovereign powers by each state. Congress can have no right, therefore, to deprive a state of any officer *necessary* to the action of its government; and the state itself is the sole judge as to the officers that are *necessary* for that purpose."

I entirely concur with the doctrine here expressed; but can it be said that the officers of a locality within the enemy's lines, and under the regular supervision of the agents of a foreign government, *are necessary to the action of the government of the state?* And under this doctrine, can any officer of a county within our own jurisdiction be entitled to exemption unless he be *necessary?* It is said, however, that all the officers named in the constitution, and provided by the law, are pronounced necessary by the very highest authority, and can under no circumstances be questioned, and whether employed or not, cannot be required to perform any other duties than those for which they were elected. Surely this will strike the reflecting mind with surprise. The constitution intended to provide a frame of government for those on whom it was to operate. It was necessarily experimental. The offices authorized were doubtless presumed to be necessary; but if found to be otherwise, why should those appointed to fill them be relieved from the performance of other duties required by the wants of the community. Indeed, I lay it down as a broad proposition that no person occupying office is exempt from the other duties of a citizen, except on the score of incompatibility. I ask with confidence, why should a citizen be excused from other obligations, when they do not interfere with the performance of those to which he is specially elected. If a man can perform more than one duty, why should he not do it? I whould like to her a good and sufficient reason in answer to this interrogatory. It would be a great reflection upon those who framed the constitution, to suppose that they intended any such conclusion; and in the absence of all provisions to that effect, it cannot be presumed. Nowhere in the constitution is provision made, in terms, for exemption. It is inferential merely, and then only upon the ground of incompatibility of service. The same remarks will apply to the legislature.

The doctrine contended for may lead to the most fatal results. If all the officers designated in the constitution, and in the laws made in

pursuance thereof, are to be exempted because they are state officers—if all the justices of the peace, who by the bye were never exempted until the 1st of October 1862, having from the revolution to that period been required to perform military duty—if all sheriffs and clerks and their deputies—all commissioners of the revenue—all surveyors and commonwealth's attorneys—all constables and overseers of the poor—all county agents for supplying soldiers' families—all salt agents, commercial agents, &c.—all employees of banks, cities, towns, &c., are to be exempt indiscriminately, and without reference to their necessity, then indeed, in the language of the decision so frequently quoted, "the spectacle might be presented of a nation subjugated and distroyed at a time when it had within its limits citizens amply sufficient to defend it against all the assaults of its enemies, but whose services could not be commanded, because, forsooth, the government had contracted with them that they should not be required to serve in the army." So far, in this state, the number of exempts is comparatively small; but in other states we are told it is widely different. At this time a powerful army of the enemy is sweeping over the state of Georgia, in which, under the doctrine contended for, there is now an army of exempts—exempts because officers and employees of the state government.

At this time the pressure of the service inspires a very common desire to escape from it; and the remedy by habeas corpus, designed for extraordinary acts of official tyranny or individual acts of oppression, is daily resorted to, to extricate the citizen from the holy duty of defending the country. Lawyers of every degree hie to the feast thus spread before them, and judges in chambers and in court feel constrained to apply the principles of the writ to those but little better than moral deserters from the standard of their country, and at a time too when she is struggling in a death grapple with her gigantic foe. But do the judges agree among themselves in a uniform application of the same principle. In North Carolina exemption assumes the broadest form, while in Alabama a much narrower rule is adopted—and even in Virginia some differences exist. But all, I believe, concur that the judges have the right to pronounce who are exempted from military duty by reason of their office, notwithstanding the legislature and the executive may entertain a different opinion. It does not matter what the legislature may declare by law—it does not matter who the executive may deem necessary to enable him to see the laws faithfully executed—the court understands better than their coequal and co-ordinate

departments, what is necessary to presere the state governments! Against this I enter my firm yet respectful protest.

The 2d article of the constitution reads as follows:

"The legislative, executive and judiciary departments shall be seperate and distinct, so that neither exercise the powers properly belonging to either of the others; nor shall any person exercise the powers of more than one of them at the same time, except that justices of the peace shall be eligible to either house of assembly." The Massachusetts constitution still more emphatically declares that "in the government of this commonwealth the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative or judicial powers, or either of them; the judicial shall never exercise the executive and legislative powers or either of them: to the end that it may be a government of *laws*, and not of *men*." Of course, all intermixture of these departments, except as provided in the constitution, must be in violation thereof. These departments are co-ordinate, and each is supreme and independent of the others within their respective spheres. This is the theory of the constitution at least; and it is the universal sentiment of the American people, that their complete separation is essential to public liberty. The Federalist has strongly said that "the accumulation of all powers, legislative executive and judicial, in the same hands, whether of one, a few or many, and whether hereditary, self-appointed or elective, may be justly considered the very definition of tyranny." Can it be then that the judiciary can properly prescribe its own bounds as well as those of its co-ordinate departments? Where is the authority for it? It cannot be found either in the constitution or the law—a fact conclusive against the jurisdiction assumed. I know the general sentiment is otherwise, and that it is insisted that the power is essential, and must therefore exist. This, I submit, is begging the question, and cannot be conceded. Were it so, then the independence and equality of the departments would no longer exist. The power in one to give law to the other, demonstrates this too clearly to require argument.

While, however, it may be conceded that the judicial department, in the last resort, is the final expositor to the constitution as to all questions of a judicial nature, it is equally clear that it cannot assume jurisdiction of political questions. This doctrine was quite elaborately treated in the case of Luther vs. Borden, [7 How. R.] in the celebrated Dorr case, out of

was treated—and it was declared that the court could not take jurisdiction of qustions of political power. For instance, that it was the right of the political power to decide which was the rightful constitution of the state of Rhode Island—the charter or that known as the Dorr constitution—that it was not a judicial question. So, it was conceded that the president alone had the right *to decide* when such insurrection or rebellion existed in a state as required him to call out the militia—that it was not a judicial question. So, in cases of contested elections before the senate, they involved a question of political power to be decided by that body. So likewise, in case of a treaty or the recognition of foreign nations, they involved questions of political power over which the judiciary could not take jurisdiction. I respectfully submit that this important listinction should be taken by our judges. When the legislature declares who shall be subject to military duty, it is an act of political power with which, it seems to me, the judiciary should not interfere. And when the executive, to whom the special duty is assigned of seeing the laws faithfully executed, decides that a certain officer or employee is not necessary, it is an act of political power, which should equally command the forbearance of the courts. It was objected in the case just quoted, that in conceding to the president the decision as to which was the rightful constitution of Rhode Island, it was yielding him a dangerous power which might be abused. The learned judge who pronounced the opinion of the court, emphatically said in reply: "All power may be abused if placed in unworthy hands; but it would be difficult, we think, to point out any other hands in which this power would be more safe, and at the same time equally effectual." "At all events, it is conferred upon him by the constitution and the laws of the United States, and must therefore be respected and enforced in its judicial tribunals." You, gentleman, can apply this quotation. But I may be pardoned—as the several departments take the same oath of office, that of fidelity to the constitution, and are all, in view of the constitution, equally honest, capable and faithful—if I claim for the legislative and executive departments the same right to judge of their own powers that is exercised by the judiciary as to theirs. This is indispensable to preserve the equilibrium of the several departments—a matter of the last importance, as upon it depends the preservation of constitutional liberty, according to all writers upon free government. My conclusions then, are that the several departments have no right to define the political powers of each other; that political power is not of a judicial nature; that there is no authority in the constitution or the

laws, which gives to the judiciary the right to define its own boundaries and those of the other branches of the government: that whatever may be the necessity of having a tribunal clothed with such powers, none has been provided, and cannot be provided by judicial construction; that the right on the part of the several departments to refuse to co-operate in the unconstitutional measures of each other, of which each has an equal right to judge, is eminently proper, healthful in action, and well calculated to preserve intact that division of powers guaranteed in the second article of the constitution. That the constitution contains no exception, confers no privilege, except "in consideration of public services;" that election to office does not protect any man against other duties, except so far as they may be in conflict with these to which he was elected; that, in the language of the court of appeals, "the obligation of the citizen to render military service is a paramount, social and political duty," from which no man can be discharged except on account of his civil duties, and only to the extent required by such duties; that military service "is a matter in which the whole body politic is interested;" that "the citizens have a right collectively and individually to the service of each other, to avert any danger which may be menaced," of which they cannot lawfully, and ought not to be deprived by any authority whatever. And I here, in the name of patriotism; of our manhood; of our dear old state, rent and torn by a vandal foe, and of our bleeding country, protest firmly but respectfully against the entire doctrine, which would give to able bodied men the legal right to walk abroad untouched amid the general suffering and desolation.

I have uniformly acted upon the principle, that the state government had an inherent right of self-preservation, which involved the right to all the officers and employees, of every description, necessary thereto. I have never hesitated to claim all such persons, and to assert a right to judge for myself as to the necessity of such persons, as against the confederate government. I understand this principle to have been broadly conceded by the act of congress of the 17th of February 1864. This act did not undertake to grant power to the governors of the states, who could not accept power from such a source, even had such been the design of the act. But I repeat, I do not understand it to have had any such purpose in view. The certificate spoken of in the act was merely designed to obtain information of the governors of the states, of the persons claimed by the states as their officers and employees; and such certificates are very properly conceded by that act to be con-

clusive upon the confederate authorities. Recognizing in the confederate government the right to the whole military power of the states, except to the extent of such persons as are necessary to the preservation of the state government, and the execution of her laws, I have uniformly confined my certificates of exemption or claim to such persons as I regarded necessary therefor. In the case of justices of the peace, I did not and do not believe that the number authorized by law was necessary to the execution of the duties imposed upon them. I know perfectly well that three, instead of four, are amply sufficient for all the purposes of the state; and I aimed, as a general rule, to confine myself to that number. I recognized the right of all, however, to be commissioned; and deeming such to be my constitutional duty, commissioned those who had been only elected by the people.

It is not a little curious that justices of the peace, at least from the first revolution up to the present one, have never been regarded otherwise than subject to military service. They have been treated uniformly as a part of the militia. They fought in the first revolution: they fought in the year 1812: they mustered at cross roads and other places of meeting; and the exempting favor of the legislature never reached them until the 1st of October 1862. It is strange that, in the midst of a deadly struggle, your predecessors should have deemed it proper for the first time to protect these gentlemen from military service, pronounced by the highest judicial authority of this state to be "a paramount social and political duty." It is also strange that for the first time it should be treated as a judicial question, and that our judges should likewise concur in pronouncing them exempt from military service, and that too notwithstanding the same high authority to which I have just referred, has pronounced military service "a matter in which the whole body politic is interested."

But so it is; and yielding to the force of this combined opinion, I respectfully suggest for your consideration the passage of a law which will diminish the number of these officers, and restrict their selection to persons of an age usually beyond the period of military service. I propose the passage of a law diminishing the number of the districts in the several counties, and confining the election of magistrates to persons over forty-five years of age. There is no question of your power to enact such a law—there is no doubt of its giving great satisfaction to the people; and the discreditable efforts which were made in certain localities, by hale and hearty young men, to obtain their election as

justices of the peace, thereby to secure their exemption from the honor of defending their country, would no longer reflect upon the patriotism of our people. But many of our best citizens are unwilling to yield any of our state officers or employees to the claims of the confederate government. They are entirely willing to see such persons embodied in a state force, to be called out on great emergencies, because under state authority they can be returned to their civil functions as soon as the emergency shall have passed. Apart from the great principle of the salus populi, they insist that it is entirely in the power of the legislature to embody the state officers, &c., as an auxiliary force, under the circumstances to which I have referred. In Georgia this principle is acted upon, and under it Governor Brown has been enabled to embody an army of considerable size, which has rendered and is rendering valuable service in the campaign in his great state. In Mississippi the same doctrine prevails with the like results, in which, indeed, the power is claimed, without question by the judiciary, to assign supernumerary state officers to the confederate service. In an act passed by the general assembly of that state on the 13th of August 1864, the preamble thereto reads as follows:

"Whereas, in the present situation of affairs, it is not necessary to the proper administration of the state government, that the officers, members and agents hereinafter named, shall be held exempted from the military service of the Confederate States; and, in the absence of such necessity, the state is willing to waive her rights in the premises to all officers, members and agents not named in the constitution, and not necessary to the preservation of our form of government."

This preamble fully recognizes the policy for which I have been arguing; and in giving up a part of her state officers, the state impliedly asserts a right to do so with all, under the qualification stated. Should it not be the pleasure, however, of the legislature to adopt my views, I respectfully urge, in this dark hour of our fortunes, that the entire male population of our state may be embodied for the purpose of co-operating in our great struggle. The second class militia, authorized under a special act, restricted in its operations to a few localities, has been of great advantage, and has rendered most efficient service. Perhaps no regular force in the army has performed more arduous duty, since the 6th of May, than those portions of it, including the 19th Virginia militia, organized in the cities of Richmond and Petersburg.

In consequence of the frequent and extensive raids of the enemy,

often in small parties, and the great destruction and outrages perpetrated by them, it has become indispensable to organize our whole male population. Were such an organization made, even of the force now left at home, the country would be saved from the ravages which lay waste our fields, certainly to a large extent; and the enemy, who respects in no degree the laws of civilized war, sparing neither age nor sex, would be compelled to contract his line of march, move in larger masses, and range over a much more limited amount of our territory. I most respectfully submit a bill for your consideration, designed to provide for this important object.

1st. It proposes that the reserve force of the state should be organized by the governor, and when completed, to be reported to the assembly for such change as it may see fit to make.

2d. That the governor shall not move said force beyond the limits of the state.

3d. That no portion of such force shall be called out for a longer period than thirty days.

4th. When practicable, said force shall be assigned to duty in the several counties from which it may be drawn.

5th. The particular duties to which this force may be assigned, are designated.

6th. That the county court and county officers shall aid in the enrolment.

7th. That the governor shall provide for the proper discipline and order of said force.

8th. This bill being a war measure, it is proposed that it shall expire with the proclamation of peace, only suspending in the mean time the general militia law.

It will be observed that this bill asks for no appropriations, nor for commissaries or quartermasters. My plan is to make an arrangement with the secretary of war to pay off such portion of the reserved force as may be called out, when its particular service is ended, by marching it to the post quartermaster of its county for that purpose, who would be instructed accordingly; and my purpose would be, when necessary, to appoint respectable old gentlemen quartermasters and commissaries for the particular occasion, and for them to settle up any accounts they

may have created with the post quartermaster, and be likewise paid off, thus closing up the transaction without perplexity or delay, and to the entire satisfaction doubtless of both the government and people.

Many of the citizens of Virginia were in other states and countries at the beginning of the war. Not a few of them returned to join in her defence and to share his fate, and some have sealed with their blood their patriotic devotion to our beloved commonwealth. A record should be made of such, as an evidence of our high appreciation of their conduct, and transmitted to posterity. But I regret to inform you that many who owe loyalty to our state are still absent, unmindful of their duty in the terrible struggle in which we are engaged. Many have left since the beginning of the war, leaving their families and property behind them. It is doing no injustice to such recreants to assume that their purpose is to escape the demands of military service, and that they leave their families with us as the means of preserving their property. Shall such unworthy and treasonable policy succeed? Shall such men, abandoning the holiest and noblest of duties, that of defending their country, escape without penalty, and their property be preserved and protected by our laws and arms until, under more propitious circumstances, they can return to it? I earnestly recommend the passage of a law authorizing the issue of a proclamation warning all citizens of Virginia now in foreign parts to return without delay to the state—failing in which, besides personal penalties, their property of every description should be confiscated, and their families sent into the enemy's lines.

There are some persons whose fidelity to the state is much questioned, and who, if arrested, can rarely be convicted in consequence of the difficulty of having the testimony present when the day of trial arrives. They very generally escape from want of evidence, although there is the strongest moral assurance of their guilt. I hope that you will give the subject your attention, and pass such a law as this condition of things requires. In this connection, I would respectfully call attention to the Code, page 118, in reference to the arrest of suspicious persons. The sixth section should be enlarged, so as to comprehend all foreigners as well as citizens, with authority to remove such as may be thought fit, beyond the limits of the state. There is a great necessity for some such measure, and I hope it will engage your early attention.

Our free negroes are very disorderly, many of them doubtless disloyal. In the towns, and especially in the city of Richmond, they are

guilty of many outrages upon persons and property, full proof of which it is difficult to procure. They sometimes are found co-operating with the enemy, and occasionally indulging in the utterance of treasonable sentiments and threats against our fellow-citizens. The laws are inadequate to their proper management, and will, I hope, be made to cover such cases.

When this war began, it was confidently believed by our enemy that it would be of short duration. Relying upon his vast superiority in numbers and material of war, he expected to overrun us with facility and ease. But the result of a single year's operations corrected this expectation, and impressed him with the conclusion that he had on hand a contest of great magnitude—full of danger and difficulty. Having soon exhausted his floating population, he openly recruited his armies on the continent of Europe. Not satisfied with this, he seized our slaves, and, in violation of all civilized war, armed them against us. Under every disadvantage, the war has been protracted deep into its fourth year, and we find ourselves looking around for material to enlarge our armies. Whence is it to come? The laws of natural accretion will not furnish a sufficient supply of men. Foreign countries are, in effect, closed against us. Recruiting from the prisoners we capture will not, except to a limited extent, supply our wants; and the public attention naturally turns to our own slaves as a ready and abundant stock from which to draw. This policy, however, has given rise to great diversity of opinion. Some consider it as giving up the institution of slavery. Others declare that to put our slaves in the ranks will drive our fellow-citizens from them, and diffuse dissatisfaction throughout the country. In reply, it is said that this policy will effectually silence the clamor of the poor man about this being the rich man's war; that there is no purpose to mingle the two races in the same ranks, and that there cannot be a reasonable objection to fighting the enemy's negroes with our own; that as to the abandonment of slavery, it is already proclaimed to be at an end by the enemy, and will undoubtedly be so if we are subjugated, and that by making it aid in our defence, it will improve the chance of preserving it.

This is a grave and important question, and full of difficulty. All agree in the propriety of using our slaves in the various menial employments of the army, and as sappers and miners and pioneers; but much diversity exist as to the propriety of using them as soldiers *now*. All agree that when the question becomes one of liberty and independence

on the one hand, or subjugation on the other, that every means within our reach should be used to aid in our struggle, and to baffle and thwart our enemy. I say every man will agree to this; no man would hesitate. Even if the result were to emancipate our slaves, there is not a man that would not cheerfully put the negro into the army rather than become a slave himself to our hated and vindictive foe. It is, then, simply a question of time. Has the time arrived when this issue is fairly before us? Is it indeed liberty and independence or subjugation which is presented to us? A man must be blind to current events—to the gigantic proportions of this war—to the proclamations of the enemy—who does not see that the issue above referred to is presented *now*. And, I repeat, the only question is, has the time arrived? Are we able, beyond a question, to wage successful war against a power three times our own in numbers, with all Europe from which to recruit, and who unhesitatingly put arms in the hands of our own negroes for our destruction? I will not say, that under the Providence of God, we may not be able to triumph, but I do say that we should not from any mawkish sensibility, refuse any means within our reach which will tend to enable us to work out our deliverence. For my part, standing before God and my country, I do not hesitate to say that I would arm such portion of our able-bodied slave population as may be necessary, and put them in the field, so as to have them ready for the spring campaign, even if it resulted *in the freedom of those thus organized*. Will I not employ them to fight the negro force of the enemy? yea, the yankees themselves, who already boast that they have two hundred thousand of our slaves in arms against us? Can we hesitate—can we doubt—when the question is, whether our enemy shall use our slaves against us, or we use them against him—when the question may be between liberty and independence on the one hand, or subjugation and utter ruin on the other.

In the meeting of the governors the following resolutions upon this subject were unanimously adopted:

"And whereas the public enemy having proclaimed the freedom of our slaves, are forcing into their armies the able-bodied portion thereof, the more effectually to wage their cruel and bloody war against us: Therefore,

Be it resolved, That it is the true policy and obvious duty of all slave owners timely to remove their slaves from the line of the enemy's approach, and especially those able to bear arms; and when they shall fail to do so, that it should be made the duty of the proper authorities

to enforce the performance of this duty, and to give to such owners all necessary assistance as far as practicable.

Resolved, That the course of the enemy, in appropriating our slaves who happen to fall into their hands, to purposes of war, seems to justify a change of policy on our part; and whilst owners of slaves, under the circumstances, should freely yield them to their country, we recommend to our authorities, under proper regulations, to appropriate such part of them to the public service as may be required."

The object of these resolutions, as understood by me, was to call public attention to the consideration of the policy of bringing our slaves into this war. It seems that "a change of policy on our part" was contemplated; and we determine, in reference to our slaves, to "recommend to our authorities, under proper regulations, to appropriate such part of them to the public service as may be required.

I am aware that a clamor has been raised against the policy of putting the negroes into the army, by good and loyal men, because, they say, "the end is not yet"—that our army of citizen soldiers is still competent to make good our defence. No one would advocate the policy of thus appropriating our slaves, except as a matter of urgent necessity; but, as public opinion is widely divided on this subject, does not common prudence require us to fear that those opposed to this extreme measure may be mistaken? Suppose it should so turn out, how deep would be their responsibility to the country, to freedom and independence everywhere? I know it is the opinion of some of the highest military authorities that the time has come when we should call our slaves to our assistance; and I hold it to be clearly the duty of every citizen, however much he may doubt the wisdom and necessity of the policy, to co-operate in strengthening by every means our armies. I repeat, I know this policy is looked to with anxiety by some of the ablest military men of the age, who believe that it is of the last importance that it should be adopted without delay. I therefore earnestly recommend to the legislature that they should give this subject early consideration, and enact such measures as their wisdom may approve.

As an additional auxiliary to the successful prosecution of the war, I deem it of the gravest consequence that our currency should be improved. I am entirely satisfied that it may be effected. With the great staples at our command, as the basis of such purchases abroad as are necessary to our defence, with a judicious system of taxation and public credit, the blunders of the past may be speedily reformed, and the

public confidence assuredly revived. I bring this subject to your consideration, as you may promote the policy of improving the currency, by lending the aid of co-operative legislation to that of the confederate government.

There is a measure now pending before congress, proposing to reduce the currency by the issue of tithe certificates, in effect pledging the tithes in cotton, wheat and corn to the redemption of such certificates and continuing the tax in kind, after the war shall terminate, until they shall be fully paid off and discharged. The security must necessarily be ample, and all persons, not needing the currency for immediate use, will find such investment a most judicious one.

The legislation, I would suggest, is in aid of that policy, and I submit the following plan for your consideration: Let the state go into the market and purchase up the currency at its market value for gold—say twenty in currency for one of gold. The effect of this would be to reduce the price of gold at once to that standard as a maximum, which would necessarily invole a reduction in the prices of all commodities, thereby securing a general benefit to every individual in the community.

The question will naturally be asked, how is the gold to be obtained? The reply is easy. It is known that our state banks have a large amount of specie on hand entirely unproductive, not even contributing to sustain their credit, and a source of constant anxiety to the officers in charge of them. In this state of things, the banks, I have no doubt, would cheerfully surrender their specie to the state, upon her obligation to return it at the end of the war, and the assignment of the tax in kind certificates of the confederate government issued to the state from time to time for the currency which she might acquire. The faith of the state, with this collateral security, would, I am persuaded, be entirely acceptable to the banks under the circumstances which imperil us. Should we triumph in our present struggle, which I doubt not, the security would be ample; and should we fail, of course the security would be valueless, and all would be lost, except in the diffusive benefit to the people from the circulation of the coin now excluded from all useful purposes.

It is no objection that this measure may not be adopted by the other states. Its wisdom is so obvious that it is hardly to be presumed that they will refuse to co-operate. But happily, it is a measure that must be highly beneficial to the state which engages in it, even if alone, while it would tend to aid the important effort to reduce and improve the currency. I will not dwell upon this subject, but believing it a

measure of great importance, well calculated to aid in the public defence, as well as beneficial to the state and people thereof, I ask for it your careful consideration.

Allow me, gentlemen, particularly to commend to your favorable consideration the absolute necessity of regulating prices. I know this policy is destined to meet a stout resistance; but fully impressed with its great importance, under existing circumstances, I may be pardoned, I hope, for pressing it upon your attention.

I felt myself at liberty, shortly after your adjournment, in consequence of the failure of the bill making an appropriation to engage in the acquisition of supplies, for want of a constitutional, not a numerical majority, under the crying necessities and sufferings of the people for bread, &c., to use such portion of the contingent funds under my control as would partially relieve their wants. With this fund, and means otherwise acquired, I engaged in this business, and am gratified to believe that I contributed a considerable amount of relief to the destitute families of soldiers and other suffering poor. Among the articles purchased was about three hundred thousand pounds of rice. At the time I got it to this market the retail price of the grocers was two dollars and a half per pound. This price, extortionate in a high degree, was the practical result of untrammeled competition under the laws of trade. By my purchase I was enabled to put it upon the market, under certain restrictions as to the quantity to be purchased, at fifty cents per pound, which covered the cost and all expenses, including a small advance to provide against accidental losses. This involves the principle of the maximum. The same result occurred in the corn I bought and distributed. I sold one large lot at fifteen dollars a bushel, even sending a considerable quantity to the county of Tazewell. I mention these facts as practical illustrations of the value of the measure I urge upon your consideration.

Having, however, discussed this question in my inaugural message, I content myself by making an extract therefrom, with the single remark, that if it be the pleasure of the legislature to appropriate the requisite sums, I can no doubt place supplies here which will greatly reduce their present market value, and protect our suffering state from the danger of absolute starvation:

"While, however, the people of the state have acquiesced in the prices fixed by the public commissioners, others have been unwilling to accept them, in consequence of higher prices being offered by specula-

tors and others. This very naturally produces discontent on the part of the more liberal and patriotic portion of the people, while others resort to hoarding, hiding and other disreputable shifts and evasions, to avoid their contribution to the support of our gallant army. This state of things is very demoralizing, and may, I think, be easily corrected by the establishment of a state maximum, which, taking the confederate maximum as a basis, shall be extended to all the productions of human industry.

"I know that this proposition has always met with the most determined opposition, and yet it has always prevailed in times of public trouble. I know it is said that France tried, and France gave up this policy. And yet she first tried it upon corn, then enlarged it, but never made it general, adhered to it through all the dark hours of her revolution, when she was rent by intestine dissensions, and engaged in war with the whole of Europe, and never abandoned it until she had resumed a specie currency, composed her intestine feuds, and brought continental Europe to her feet. What occasion had France to adhere to this policy, when she fed her armies from the stores of other nations, and replenished her treasury by contributions upon them?

"But it is the duty of wisdom to comprehend the force of circumstances. What is our situation? We are cut off from the world by our enemies, insulated as completely as if we were on an island in mid-ocean, and no productions from abroad, like those raised by us, are allowed to come in competition with our own. Can it be contended, with any propriety, that there can be, in such a state of things, a market price for commodities in the sense of the economists? Again, the supply of our own productions is inadequate for a liberal consumption. Bread, meat, shoes, cotton and woolen cloths, are painful illustrations of this stern fact; and I ask, where is the competition to be found which is to put these articles within easy reach of the naked and the hungry? It is sometimes said, that it is the currency which causes this great exaggeration of prices. To some extent, this may be so. But where the supply of actual necessaries is deficient, and the price of them is fixed by the *conscience of the seller alone*, the currency is of but little significance: the hungry must be fed, and the seller knows it; and the price must be paid, in whatever currency required.

"Nor is the maximum unknown in daily life. It was the law, that the person who took out a license as a tavern keeper should keep proper accommodations for the traveler, and then should not charge him for

meals at pleasure, but only the rates fixed by the county courts. So in the cases of bridges and ferries, where the prices are fixed by law. But there is a very remarkable case of maximum which seems to have escaped general observation—I mean interest upon money. No lender shall take more than six dollars for the loan of one hundred dollars for one year. Should the lender bargain for more, the contract is void. If he takes more, he forfeits double the sum loaned. Here is a maximum of great antiquity, on money, the token or representative of all property; and yet it is not proper to set a maximum on the property so represented!

"That the law of maximum will be difficult to enforce, I readily admit. So is the whole criminal code. So is the law which forbids the loan of money at more than legal interest. So is that bright, hopeful and glorious plan of salvation for which a *Saviour* died. But shall we, for such reasons, abandon our efforts to reform, benefit and save mankind?

"But the maximum would have other important advantages. It would put an end to discontent among the people; it would extinguish the practice of hoarding and hiding. Without any hope of increasing prices, producers would cheerfully furnish to consumers their surplus. Uniformity of price and the application of the maximum to all things would, I am persuaded, inspire general satisfaction, and relieve the necessary duty of collecting supplies for the army of that irritation which has heretofore, in many cases, made the duty most unpleasant, and restore those kind and agreeable relations which should always exist between the people and their government. Surely, when such must be the happy consequence of this measure, the states will speedily adopt it."

The act entitled an act to provide for the purchase, and distribution among the people of the state of cotton, cotton yarns, cotton cloths and hand cards, passed March 9th, 1864, was put in operation shortly after your adjournment, by the appointment of S. Bassett French, Esq., as commercial agent. It was somewhat delayed by the difficulty of obtaining a suitable agent, not a single application for the agency having been made, in consequence, chiefly, of the large amount for which a bond was required, and I was compelled to press it upon Colonel French, then acting as my aid.

The agency, although very much embarrassed for the want of transportation, and restricted in the extent of its operations, has been a

source of very great relief to the people. Its operations, limited as they have been, have had a decided effect upon the markets, of the articles in which it dealt. It has saved thousands of dollars to the people, and greatly improved their comforts. The report of the agency, which will soon be laid before you, will be a powerful argument in favor of a maximum, inasmuch as they have, to a very large extent, prevented the shameless extortion practiced upon our fellow-citizens in the enumerated articles, clearly demonstrating its necessity, or the appropriation of large sums for the purchase and sale, by the state, at cost, of all the leading articles of consumption.

I have already mentioned that I had engaged in some operations designed to relieve the distress of our fellow-citizens, and I will now add have also supplied, to some extent, the penitentiary and state guard. I also, with a view to aid in furnishing materials to the workshops of the penitentiary, shipped several small lots of cotton abroad, and imported in return, leather, steel and a variety of other articles intended for the purposes stated and the other uses of the state. I have also ordered cloth for the state guard, which, for want of proper clothing, presents a very discreditable appearance. The result, so far, of these operations, is highly satisfactory. The difficulty in this business is in obtaining transportation on the railroads, their whole capacity being generally engrossed by the confederate government. With a train, the exclusive property of the state, and a moderate appropriation, I could put supplies of bread and meat here, which would greatly relieve the distresses and wants of our people. With an appropriation of an amount sufficient to enable me to purchase a steamer and to load her with cotton and other staples, I could clothe our volunteers in comfort and decency, and enable the state to redeem the pledge made to our volunteers by the resolution adopted January 17th, 1862. It is mortifying to the pride of the Virginian to see our gallant soldiers in the field in a state of want and destitution, while the soldiers of other states, more enterprising, have every comfort which they require. With these facilities, I could easily supply all of our state institutions abundantly and upon the best of terms. I shall be prepared to submit to a committee of the legislature an account of these operations, which I flatter myself will be entirely satisfactory.

In the management of the purchases I have made, within the Confederacy as well as abroad, and in the distribution thereof, I have called to my aid the quartermaster's department, the members of which have

cheerfully performed all the duties required of them. The report of the acting quartermaster general, Major Fitzhugh, will disclose the character and extent of these operations, and is herewith respectfully submitted.

In connection with this subject, I have to call your attention to the rights of the state over the railroads within her limits. By the 23d section of chapter 41 of the Code, it is provided that "troops, persons and munitions, &c. and other property of the Confederate States shall, in time of war, be required to pay only one-half of the regular tolls payable by other persons." The construction put upon the railroad law by the managers of these roads, sustained by the opinion of the attorney general, is that Virginia is not included in this provision, and that freights upon her goods and persons traveling in her service are charged as the persons and property of private individuals. This discrimination is certainly very unjust to the state, especially as she is a large stockholder in all of said roads. Some roads, it is true, have put the state upon the same footing with the confederate government; but that is at the pleasure of the management of the road, and ought to be regulated by law. In North Carolina and other states the practice obtains, I suppose by authority of law, that whenever the governor requires a train on the road for the public use, he issues his order to the particular road upon which transportation is required, and it is promptly furnished, to the exclusion of all other demands whatever. I respectfullysuggest that a similar law be enacted, conferring upon the governor the same authority.

Allow me to suggest a careful examination into the business operations of our railroads. Undoubtedly they are far from affording to the traveler that comfort, celerity and dispatch which was expected at the time of their construction. This is hardly denied by the managers of the roads; and their excuse is, the pressure of the government business, and the difficulty of obtaining the requisite materials and hands to keep them in proper order. Others say, however, that the fault consists in their failure to apply their receipts to repairs, equipment and construction, growing out of their eagerness to pay off their debts. Without professing to know how the fact is, the inconvenience to the public calls for a careful investigation.

I have the honor to lay before you, for your consideration, the annual report of the adjutant general. It embraces the report of the ordnance department. Like all the reports of this old and valuable officer,

it abounds in wise and practical suggestions; which I recommend to your favorable consideration.

I submit likewise the report of the attorney general.

From my late connection with the army, I could but learn the great inconvenience and expense to which our soldiers are put in the adjustment of their claims against the confederate government. The claims of the widows and orphans of those who had died or been killed in battle, were also difficult of adjustment, for want of proper information, and the great expense of prosecuting them before the government, resulting frequently in their abandonment, or the employment of agents at a ruinous compensation. I felt that some provision should be made for an easier and cheaper collection of these highly meritorious demands. With this view, I ordered Colonel Henry Hill, paymaster general of the state, without existing employment, to undertake the adjustment of all such claims, free of charge. He was also directed to attend to all claims on the part of any soldier of the Virginia forces, also free of charge. And I authorized him to provide himself with whatever was necessary to the efficient performance of his duty. Colonel Hill being in the pay of the state, the additional expense will be inconsiderable; but still, if such an agency should meet with your approbation, some legislation will be necessary to perfect it. I am satisfied that it has already produced much good, and I recommend it to your favor.

After your adjournment, I was repeatedly called upon to take steps to make a record of the Virginia forces, which should include not only a full list of all those gallant spirits who had dedicated their lives to the defence of their country, but also a list of deaths by disease and battle; of those wounded, and at what places; of those distinguished by acts of extraordinary gallantry; of desertions; of traitors—in short, to make a roll of honor as well as dishonor, so as to transmit to posterity a complete record of the conduct of the sons of Virginia. Completed and carried out, as it is important it should be, it will be a book of valuable reference, and of profound interest to us all. Yielding to what seemed to be public sentiment, and instituting an examination to see what laws (if any) had been passed upon the subject, I found an act passed Febauary 7th, 1862, entitled "an act to empower the governor to have made out, and filed in the state department, complete lists of Virginia forces." In the preamble to the act the policy indicated above seems to have been intended by the legislature; and as the power is conferred by that act upon the governor to do all things neces-

sary to carry out such intent, I organized a board accordingly, by the appointment of Joseph Jackson, jr. as the head thereof, with an assistant, and specified the salaries to be received by them—inadequate, it is true, but conforming substantially to the compensation provided by law for the officials in the several departments of the state government. I subsequently authorized other appointments, still however not in sufficient number to proceed with proper dispatch in the execution of this noble work. The plan and progress of the work will, however, be disclosed in the official report of Mr. Jackson, to which I invite attention.

In consequence of the great atrocities of the enemy, of every description known to savage war, I enlarged the duties of the recorder, by directing him to take evidence of the outrages referred to, that an undoubted memorial thereof might be preserved, and the truth might stand forever vindicated. I deem this the more necessary, as posterity will not believe, without the clearest proof, that a powerful people, boasting of its civilization, was capable of perpetrating acts that should damn them throughout all time and with every christian nation. This organization, however, requires legislation to perfect it.

The penitentiary report will also be laid before you. I flatter myself it will exhibit very gratifying results. I believe that, under the management of its present efficient superintendent, it will soon develop a high degree of prosperity. It has labored under great disadvantages from want of supplies and proper managers, from which causes heavy losses have been sustained. When large shops are out of material and hands consequently without employment—when an unskilled manager of a shop permits work to be imperfectly finished—heavy losses must be inevitably incurred. Such has been the case with this institution under its present organization, on several occasions. It is almost impossible to obtain material in the existing condition of the country; and true economy requires us to encounter the hazards of the blockade business, that we may draw our supplies from abroad. Another disadvantage to the institution grows out of the number of convictions for short terms. The period is too short for the convict to learn a trade, and his labor is consequently wasteful and unproductive. I trust, gentlemen, that you will correct this evil, by increasing the minimum term for which imprisonment in the institution is permitted.

I have exercised the pardoning power with liberality in the *short term* cases, especially when the convicts were soldiers, or would make such. I thought it better to restore them to their commands, or to the enroll-

ing officer, as the case might be, after a confinement sufficiently long to vindicate the majesty of the law, than to protract an unprofitable confinement. A list, however, of the convicts who have been pardoned, with the reason therefor, will be laid before you.

The mode of supplying the penitentiary, through a purchasing agent, has been most judicious, and has in a great degree protected that institution against the effect of advancing prices.

I have found it very difficult to provide proper clothing for the state guard; in consequence of which their appearance is not such as could be desired. I have, however, recently made a temporary arrangement to obviate this difficulty, which I hope will not again occur. A most expensive system existed of supplying the guard with rations, which I deemed it my duty to change. I directed the purchasing agent of the penitentiary to purchase for this organization aiso, which has been done so satisfactorily as to save a large sum to the treasury. The appropriation need not be as large for the coming year as for that of the preceding one.

I herewith communicate the report of the rector and visitors of the University of Virginia. It is so full and satisfactory that it requires no comment.

I also lay the report of the Central lunatic asylum before you. I invite attention to its suggestions. One of them is to sanction the purchase of supplies by the obligations of the institution, payable after the war. This is rather an interesting question, and without entirely adopting the suggestion, I commend it to your attention. I regret that this great public charity should feel the influence of an expanding currency in the enlarged appropriation which it needs. You will not, I am sure, refuse it.

The report of the Virginia Military institute will, of course, be laid before you. This valuable and interesting institution has suffered severely from the inflictions of this war. Her gallant corps of cadets have illustrated their training by conspicuously participating in the hard-fought battle of the 15th day of May, 1864, at New Market, under Major General Breckinridge, and giving a foretaste of what may be confidently expected of them when new fields may demand their valor and maturer manhood may call for its display. Subsequently, however, the advancing power of the enemy swept up the Valley, and, in its desolating path, destroyed their fine buildings, making it necessary to obtain other quarters. After much difficulty, the almshouse

near this city, admirably fitted for the purpose, has been obtained, where the exercises of the school will be resumed as soon as the proper preparations can be made.

The report of the auditor of public accounts shows that the revenue standing to the credit of the commonwealth proper, on the 1st day of October last, amounted to - - - 5,416,734 87

The same officer estimates receipts into the treasury during the fiscal year ending 30th of September next, from the several sources of revenue, at - - 4,612,010 00

Making a total sum of - - 10,028,744 87

He estimates that the disbursements during the same period will be - - - - - 21,509,090 61

Leaving a deficiency of - - $11,480,345 74

Since the 1st of October, at the beginning of the present fiscal year, the commissioners, consisting of the governor, treasurer and auditor of public accounts, in pursuance of "an act to authorize the funding of certain currency belonging to the state in confederate bonds, and to authorize the sale of such bonds if necessary, and to authorize the conversion of other notes into other issues," passed March 3d, 1864, caused $5,000,000 of the currency then standing to the credit of the commonwealth to be funded in six per cent. confederate bonds; and although they were authorized by act of assembly to make sale of the bonds, they have neither deemed it necessary or prudent to do so. This funding has withdrawn $5,000,000 of the currency, which stood to the credit of the commonwealth on the 1st of October, and would, apparently, enlarge the above deficiency to $16,480,345 74, were it not that the legislature may satisfy a part of the present demands upon the treasury due to the commissioners of the sinking fund, by a transfer of the said confederate bonds to that corporation, under the provisions of the twenty-ninth section of the fourth article of the constitution of Virginia, which provides that "there shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the state debt existing on the first day of January in the year eighteen hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the state debt and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of

such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the Confederate States, or of some of the states of this Confederacy, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking fund, or its accruing interest, except in time of war, insurrection or invasion."

It must be remembered that no part of the state debt is redeemable, except at the pleasure of the general assembly; in which event, the commissioners of the sinking fund may invest the funds as well for redemption as for investment in the bonds of the Confederate States. This disposition of the confederate bonds would diminish the present demand upon the treasury, by the sum of $2,269,772 80, now due for redemption and investment, and relieve the treasury from the obligation of making further provision for such fund until after the year 1868.

I deem it right to say that this large deficit may not be expected to be called for during the coming year. Indeed, I am satisfied that there will be no difficulty in meeting all demands upon the treasury, with the aid of proper arrangements. Besides other large claims against the confederate government, the auditing board of the state report a balance against it, for moneys paid out, or cash articles supplied, amounting to eight millions one hundred and fifty-four thousand six hundred and one dollars and one cent ($8,154,601 01). Some of the vouchers for this amount have not yet been obtained, but there will be no difficulty in procuring them. This large claim should no longer be neglected; but to some one should be assigned the special duty of settling and collecting it. Its payment would greatly relieve the treasury.

The statement of the treasurer is herewith submitted, characterized by its usual intelligence and perspicuity. It requires no comment.

The second auditor's report will also be laid before you. It exhibits a clear and lucid condition of the public debt.

Under the operation of the tax laws of the confederate government, the right is asserted to tax the stock of the state, in her various corporations. This claim was made during the administration of my pre-

decessor, and was then abandoned, but is now revived. It is not pretended that the confederate government has a right to tax state property, but it is insisted that her property in banks, railroads and other corporations being in the form of stock, she has merged her sovereignty, and consequently that she has only the rights of private corporations, and is subject to the taxation imposed upon them. This distinction is merely technical, and I forbear criticising it as I might. The opinion of the attorney general is strongly against it. As the amount involved is large, it should receive prompt attention.

A strong disposition has been evinced from time to time to suppress distillation of grain, &c.; but unfortunately, the distillation of *undried* fruit was not included in the prohibition. The recent crop of apples was the most abundant we have had for many years, and would have furnished a large amount of healthy succulents and an ample supply of vinegar, so essential as an anti-scorbutic for our soldiers. But a frenzy, almost, seems to have seized upon the people for converting this fine crop into brandy, which, in its effects upon our army, is most pernicious. I earnestly recommend that the law may be enlarged, so as to comprehend an inhibition of the distillation of all fruit.

Difficulties still exist in connection with the state salt works, and the transportation to and from them. It is very much to be regretted that this gift of God to man cannot be enjoyed in peace. The states of North Carolina, Georgia, Alabama and Tennessee, through their agents, complain of their treatment in relation to their trains, and believe that they do not obtain that liberal justice which, they think, the comity between the states should give them. This impression originates, from what I can learn, in the manner in which transportation is conducted on the Virginia and Tennessee road, and in the belief that the private salt of the state superintendent is transported thereon contrary to the spirit of the acts in relation thereto. By the law, as it now stands, it is expressly declared, "that whenever the superintendent shall become interested, directly or indirectly, in the manufacture or *sale* of salt, his office shall be declared vacant." By a contract between the board of supervisors and said superintendent, they *hire* from him one hundred and twenty-one negro men, at ten bushels of salt each per month, and twelve negro women, at five bushels per month each, making an aggregate of nearly thirteen hundred bushels of salt per month; which, necessarily, must find a market, or be useless to the owner. The right as well as the policy of such a contract may well be questioned. Un-

doubtedly it nullifies the restriction referred to, and moreover inspires an impression on the part of those interested in the production and transportation of salt that it is to the interest of the superintendent to appropriate the transportation to his own private benefit, and to embarrass its production and transportation on the part of others. However unfounded this suspicion may be—and I have great confidence in the fairness and integrity of Col. Clarkson—yet, the policy of the act prohibiting the superintendent from any interest in the sale of salt, so as to protect him from all suspicion, ought undoubtedly to be sternly enforced. I respectfully suggest that a different mode of compensation than that of salt should be adopted. It will not do for Virginia, controlling as she does this great necessity of man, to allow such a state of things as may, even plausibly, subject her superintendent to the imputation of using the great power which must be confided to him for his private ends. It does not look well, after impressing the property of Stuart, Buchanan & Co. to protect the country against what was thought to be their extortion, to allow in any degree a similar power to her agent.

I respectfully submit that we, the state of Virginia, ought not to embarrass in any respect the trains of our sister states strictly engaged in the transportation of their own salt, which we have authorized them to make. I cannot doubt that the Virginia and Tennessee road, when it is necessary to do so, can easily obtain, by private arrangement, the use of such trains, when not engaged in transporting their own salt. Nor can I see the difficulty which seems to prevail in getting fuel to the salt works, or removing the salt, when made, therefrom. A single train of cars per day, I am informed, will carry more wood to Saltville than our works will consume, while a single train therefrom, carrying three thousand bushels, will transport one-third more than the whole supply needed by the confederate government and the state of Virginia. Manifestly something is wrong, and I respectfully invite your careful attention to the matter.

I think the operations at Saltville would be greatly simplified by the state undertaking to supply her sister states with salt, deliverable at Saltville, they sending by their trains supplies for the use of the works at that place. I have no doubt such an arrangement would give satisfaction to all concerned.

I have now, gentlemen of the assembly, frankly presented to you my views upon all measures to which I deem it necessary to invite your at-

tention. I cannot hope that you will concur with me entirely ; but no measure has been suggested, which, after careful consideration, does not strongly impress me as either necessary to the improvement of our condition, or calculated to strengthen our hands in the fearful struggle in which we are now engaged. Our national life depends in no slight degree upon the separate action of the several states of the Confederacy ; and I would not have our beloved state, in any of her departments, to betray a want of the purest and highest heroism in her official conduct. Let us, gentlemen, remember, in the eloquent language of our court of appeals, that "the obligation of the citizen to render military service is a paramount social and political duty," and pass all laws which are necessary to give a military organization to our whole people. If, in any proposed measure, we doubt our power or its propriety, let us remember that it is a well established rule of construction, "that all grants of privileges and exemptions from general burdens are to be construed liberally in favor of the public, and strictly as against the grantee."

And now, gentlemen, firmly relying upon a merciful God to crown our efforts with a safe deliverance from the perils which threaten our dearest hopes and most precious interests, I invoke the favor of Heaven upon your labors, not doubting but that all your aims will be your Country's, your God's, and Truth's.

Respectfully,

WM. SMITH.

# AN ACT TO PROVIDE FOR A STATE GUARD.

Whereas the state of Virginia has suffered severely, during the present war, by the hands of our uncivilized foe, in the desolation of the homes, the waste, consumption and robbery of the property of many of our people: and whereas large districts of our territory are in the hands of such enemy, while the people thereof, because of such barbarian conduct, have been, in many instances, reduced to poverty and want, and not unfrequently imprisoned in loathsome dungeons, for no other reason than their detestation of the wretched tyranny by which they are outraged and oppressed: and whereas the conduct of our foe clearly indicates that he has no expectation of reconstruction nor desire of reunion with us, and looks only to our impovishment and subjugation, thus imposing upon us the noble duty of organizing our whole strength, in aid of our gallant brethren in the field, that by our combined exertions we may establish our liberty and independence, or failing in which, may find a patriot's grave: and whereas the able-bodied men of the state, designated as the militia thereof, are now in the service of the Confederacy or subject to her control, while we have a large number of men and lads who are able to render most important service in repelling raids, arresting deserters and other military delinquents, relieving posts and assisting in the defence of cities, towns, &c., are unorganized and subject to no military duty whatever: Now, therefore,

1. Be it enacted by the general assembly, that all white male inhabitants of the state, of sixteen years and upwards, who are not enrolled in the army of the Confederate States, or who have been discharged therefrom, and all refugees and persons sojourning within the state, shall be immediately organized by the governor in such manner as to him may seem best. It shall be the duty of the several county and corporation courts to convene immediately after the passage of this act, and with the aid of the commissioners of the revenue, sheriffs and sergeants, and by way of assistance to the governor, cause all the persons before mentioned to be enrolled. And it shall be the duty of all per-

sons subject to enrolment to report themselves to said courts without delay, stating their respective ages. Any person who may fail or refuse to report himself, shall be fined by the court not less than fifty nor more than one hundred dollars, to be levied and collected as militia fines. In execution of the duty required of them by this act, the courts are empowered to require the attendance of their clerks, the sheriffs, sergeants and commissioners of the revenue of their several counties and corporations, whose presence shall be entered of record. And should any one of the officials before enumerated fail in their attendance in whole or in part, without good and sufficient cause, of which the court shall be the sole and exclusive judge, such delinquent shall be fined one hundred dollars, to be collected as the other judgments of their courts, and paid into the treasury of the state. The enrolment hereby required shall be preserved in the clerk's office, and a copy thereof shall be forwarded to the adjutant general of the state.

2. The special character of the service herein provided for, leaves but little room for exemptions or substitutes, and therefore they are left to be provided for, *in peculiar cases*, by the governor, by such regulations as he may deem expedient. But all professors of religion, of whatever denomination or creed; all physicians; all shoemakers, tanners, blacksmiths, wagon makers, millers and their engineers, millwrights, operators in wool and cotton factories; paper mills; and all teachers of colleges, academies, schools and theological seminaries; all artisans, mechanics and employees in the establishments of such persons as may be engaged under contracts with the state or confederate government; all managers, mechanics and miners employed in the manufacture of salt, of lead and iron; those engaged in burning coke, miners in coal mines, and all those engaged in attending upon cattle, mules, horses and sheep; all who may be engaged for police purposes, and such as have been or may be exempted by the president on the ground of justice, equity or necessity, and exempted under and by virtue of the act of congress passed 11th October, 1862; all men detailed for special duty by order of the secretary of war, his assent thereto being first had and obtained, and all who shall have furnished substitutes in the state or confederate service, refugees and persons sojourning within the state, shall be embraced in the enrolment directed by this act.

3. The governor is authorized and required to organize the force provided by this act in all respects as to him may seem best. As soon as he shall complete the organization herein directed, he shall report the same to the general assembly for their information, and for

such action, if any, as to them may seem fit. This force shall be denominated the "state guard," and may be called out by the governor, in part or in whole, whenever in his judgment it is necessary in defence of the state; in resisting raids and sudden invasion; in preserving order and domestic tranquillity; in relieving the confederate government from the necessity of providing guards for the protection and security of prisoners; for the various posts and other necessary organizations; to arrest deserters, absentees and other military delinquents. Such portions of the "state guard" as may be raised in their respective counties, cities and towns, shall be assigned to duty therein, if not inconsistent with the public interests, when necessary. No portion of such "guard" shall, under any circumstances, or at any time, be required to go beyond the limits of the state; nor shall such "guard," or any portion thereof, be called into service for a longer period at any one time than thirty days.

4. Such enrolled men as possess private arms may be required to use them in the public service, and shall be compensated for any loss or damage they may sustain by so doing. The remainder shall be armed by the state; and all shall be furnished with the requisite ammunition. It shall be the duty of the governor to see that the arms and other public property which may be issued from time to time to the "state guard" shall be promptly accounted for and delivered up, when thereto required, under such rules and regulations as he may prescribe.

5. The governor may establish such rules and regulations for the promotion of discipline and efficiency in this organization as he may deem necessary. And if any person who is held to service under this act shall fail or refuse to perform any of the military duties required by its provisions, he shall be imprisoned in the jail of the county or corporation not less than ten nor more than thirty days, at his own proper costs and charges, and shall be fined not less than ten nor more than one hundred dollars; and if he be not a native of any of the Confederate States, shall be required to leave the state of Virginia forthwith. The commandant of each regiment shall detail a board, consisting of one field officer and two commandants of companies, and the commandant of the battalion, where there is no regiment, shall detail a board, consisting of three commandants of companies, who shall take cognizance of and decide upon all such cases. All fines imposed by these boards shall be promptly collected by the sheriff or sergeant as militia fines, upon certificate of the presiding officer.

6. This act being a war measure, will cease and be of none effect from and after the proclamation of peace. So much of the act passed March 7th, 1862, entitled an act to authorize the governor to organize and call out certain military forces for the defence of the state as provides for the organization of a second class militia, and the act passed May 14th, 1862, entitled an act to organize a "home guard," be and are hereby absorbed in the organization authorized by this act; and all other acts and parts of act in conflict therewith, shall be and are hereby suspended. All commissions under the acts above specified shall be and are null and void.

7. This act shall be in force from and after its passage.

# SUPPLEMENTAL MESSAGE.

STATE OF VIRGINIA, EXECUTIVE DEPARTMENT,
RICHMOND, December 9th, 1864.

*To the General Assembly of Virginia:*

GENTLEMEN,

In my message of yesterday, I find I was accidentally led into an error, which it is proper should be promptly corrected. The letter of the auditor of public accounts, herewith communicated, explains the mistake and how it occurred. From the data furnished me from the books of that office, I stated that there would be a deficiency in the treasury, at the end of the fiscal year 1865, of eleven millions, four hundred and eighty-three thousand, three hundred and fifty-five dollars and seventy-four cents, which, I confess, was an amount much greater than I had supposed. From the statement now supplied, I am gratified to say that the estimated deficiency at that time will be only three millions, nine hundred and twenty-two thousand, three hundred and eighty-nine dollars and fifty-six cents, an amount, in time of war, really insignificant. When it is considered that the people of the commonwealth, for the last year, were relieved almost entirely from state taxation, this result is certainly encouraging. I invoke your attention to the letter of the auditor, and ask that the quotation from my message, as corrected, may be substituted for the original statement.

Very respectfully,

WM. SMITH.

AUDITOR'S OFFICE,
RICHMOND, December 8, 1864.

*His Excellency*, WILLIAM SMITH,
*Governor of Virginia:*

SIR,

In estimating the receipts of taxes and their disbursements through this office for the fiscal year ending on the 30th of September, 1865, a mistake was committed in estimating as expenditures $7,557,956 07 by reason of warrants to be drawn on the old issue of Confederate States treasury notes, without a corresponding credit on account of the new issue to be received for the old issue of said notes.

That part of your message relating to the report of the auditor of public accounts should be corrected so as to read as follows:

| | |
|---|---|
| The report of the auditor of public accounts shows that the revenue standing to the credit of the commonwealth proper, on the 1st day of October last, amounted to - - - - | 5,416,734 87 |
| The same officer estimates receipts into the treasury during the fiscal year ending 30th of September next, from the several sources of revenue, at - - | 12,169,966 16 |
| Making a total sum of - - | 17,586,701 03 |
| He estimates that the disbursements during the same period will be - - - - - | 21,509,090 61 |
| Leaving a deficiency of - - | $3,922,389 56 |

Since the 1st of October, at the beginning of the present fiscal year, the commissioners, consisting of the governor, treasurer and auditor of public accounts, in pursuance of "an act to authorize the funding of certain currency belonging to the state in confederate bonds, and to authorize the sale of such bonds if necessary, and to authorize the conversion of other notes into other issues," passed March 3d, 1864, caused $5,000,000 of the currency then standing to the credit of the commonwealth to be funded in six per cent. confederate bonds; and although they were authorized by act of assembly to make sale of the bonds, they have neither deemed it necessary or prudent to do so. This funding has withdrawn $5,000,000 of the currency, which stood to the credit of the commonwealth on the 1st of October, and would, apparently, enlarge the above deficiency to $8,922,389 38, were it not that the legislature may satisfy a part of the present demands upon the treasury due to the commissioners of the sinking fund, by a transfer of the said confederate bonds to that corporation, under the provisions of

the twenty-ninth section of the fourth article of the constitution of Virginia, which provides that "there shall be set apart annually, from the accruing revenues, a sum equal to seven per cent. of the state debt existing on the first day of January in the year eighteen hundred and fifty-two. The fund thus set apart shall be called the sinking fund, and shall be applied to the payment of the interest of the state debt and the principal of such part as may be redeemable. If no part be redeemable, then the residue of the sinking fund, after the payment of such interest, shall be invested in the bonds or certificates of debt of this commonwealth, or of the Confederate States, or of some of the states of this Confederacy, and applied to the payment of the state debt as it shall become redeemable. Whenever, after the said first day of January, a debt shall be contracted by the commonwealth, there shall be set apart in like manner, annually, for thirty-four years, a sum exceeding by one per cent. the aggregate amount of the annual interest agreed to be paid thereon at the time of its contraction, which sum shall be part of the sinking fund, and shall be applied in the manner before directed. The general assembly shall not otherwise appropriate any part of the sinking fund, or its accruing interest, except in time of war, insurrection or invasion."

It must be remembered that no part of the state debt is redeemable, except at the pleasure of the general assembly; in which event, the commissioners of the sinking fund may invest the funds as well for redemption as for investment in the bonds of the Confederate States. This disposition of the confederate bonds would diminish the present demand upon the treasury, by the sum of $2,269,772 80, now due for redemption and investment, and relieve the treasury from the obligation of making further provision for such fund until after the year 1868.

I deem it right to say that this deficit may not be expected to be called for during the coming year. Indeed, I am satisfied that there will be no difficulty in meeting all demands upon the treasury, with the aid of proper arrangements. Besides other large claims against the confederate government, the auditing board of the state report a balance against it, for moneys paid out, or cash articles supplied, amounting to eight millions one hundred and fifty-four thousand six hundred and one dollars and one cent ($8,154,601 01). Some of the vouchers for this amount have not yet been obtained, but there will be no difficulty in procuring them. This large claim should no longer be neglected; but to some one should be assigned the special duty of settling and collecting it. Its payment would greatly relieve the treasury.

I regret that I should have been led into an error finding its place in your message, and I take this early opportunity to correct it. My forthcoming report will exhibit the true condition of the finances of the commonwealth.

I am, very respectfully,

Your most ob't serv't,

J. M. BENNETT,

*Auditor of Public Accounts.*

Hollinger Corp.
pH 8.5